THE BLOGS

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Israel, Occupation and International Law

The land on which Israel sits today as well as the territory known to Israel as Judea/Samaria, but called by the anti-Israel crowd the "West Bank", was set aside by the international community for the re-establishment of a Jewish National Home. This is stipulated first by the 1920 San Remo Conference developed at Versailles, then endorsed by the League of Nations Mandate to England in 1922, and affirmed by article 80 of the United Nations in 1945. In May 1948, England relinquished and abandoned its mandate and the Jewish leadership declared all areas previously controlled by England (including the previously mentioned territory) to be the new State of Israel. This declaration of Statehood, and its borders, was recognized by the United Nations Security Council and the United Nations General Assembly in November 1948.

The day after Israel declared independence, five Arab armies invaded and by 1949 Jordan conquered the region known as Judea/Samaria and annexed it one year later. At that moment in history the Jordanians renamed the territory the "West Bank", for its geographic location west of the river Jordan. This was an illegal annexation because Israel already exercised sovereignty over that territory, and international law prohibited acquisition of territory through a war of aggression.

In 1967, Jordan attacked Israel again but this time Israel managed to throw Jordan's forces out of the territory, and drove Jordan back to the East bank of the river Jordan. This was a legal action, as it was taken in a war of defense rather than aggression and because the regained territory legally belonged to the State of Israel since its birth in May 1948. After all, Israel never relinquished its claims to the territory in question as attested by the text of the 1949 ceasefire agreement with Jordan:

"No provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations." GENERAL ARMISTICE AGREEMENT BETWEEN ISRAEL AND JORDAN – APRIL 3, 1949.

Although Israel did not annex the entire territory, this was due to demographic considerations and nothing else. It was understood by all that Israel had recovered territory that legally belonged to it and to no one else. In fact, Jordan's annexation between 1949-1967 was recognized only by two countries (England and Pakistan) even the Arab countries refused to recognize Jordan's annexation.

Yet, the anti-Israel crowd claims Israel is an occupier in the territory according to the Fourth Geneva Convention and the Hague Regulations of 1907. The International Committee of the Red Cross, which is an authority on interpreting the above conventions, defines Israel as an occupier. Yet, according to the International Committee of the Red Cross:

"The law of belligerent occupation (which from now on we will refer to simply as the law of occupation) governs the relationship between the occupying power, on the one hand, and the wholly or partially occupied State and its inhabitants, including refugees and stateless persons, on the other. It is applicable only in international armed conflicts." ICRC.ORG: Law of Armed Conflict

If one can only be defined an occupier in an international conflict, it begs the question what other country is Israel occupying!?

The only state in existence today, other than Israel, that controlled the territory in question is Jordan. Yet, Jordan relinquished any and all claims to this territory in 1988 and even placed this territory entirely within Israel's borders in Jordan's 1994 peace treaty with Israel.

The Red Cross chooses to ignore the legal history of the territory, preferring to see it as an undefined and unnamed place with no history. Hence, it doesn't see questions of prior sovereignty as relevant when it comes to Israel. On top of this, the Red Cross chooses to see the territory as belonging to the Palestinian-Arabs. In fact, the organization calls it "Occupied Palestinian Territory". The Red Cross's approach to the territory is inconsistent and faulty.

First of all, the Red Cross has no jurisdiction to recognize or invent new countries, like "Palestine". Hence it can't name a territory as "Occupied Palestine Territory" (OPT). Furthermore, taking the position that legal history and matters of sovereignty are irrelevant while positing that the territory indeed has a name and emphasizing a portion of its history as its total origin (i.e. nationally Palestinian) is nothing but a case of selective amnesia. They are simply choosing not to see history before 1967, or lasting legal connections that took place between 1920-1949 as outlined previously in this article.

Much can be said about international law and the Red Cross's application of it to the territory. However, it is unnecessary at this time. In fact, for arguments sake, lets put the international conflict requirement aside. Lets say that from 1967, Israel was somehow, indeed an occupier over the Palestinian-Arabs even though they are not themselves a state.

Since we want to end such an occupation, how have previous occupations ended? An example exists in recent history.

According to the Red Cross, Iraq was occupied by the U.S. from the spring of 2003 until June 28, 2004, at which time authority was handed over to the Iraqi Interim Government." -Speech delivered by Professor Daniel Thürer, Member, International Committee of the Red Cross, 6th Bruges Colloquium, 20-21 October 2005

At that point, U.S. forces remained in Iraq, but Iraq was no longer considered occupied by the international community including the Security Council because the Iraqis themselves regained self government through an interim government. The continued presence of U.S. troops was not a problem for seeing Iraq as no longer occupied because the Iraqi interim government agreed to allow U.S. forces to remain in the country.

Hence, even if Israel became an occupier after 1967 it is no longer an occupier because Israel and the PA signed an interim agreement that gave the Palestinian-Arabs self-government and authority over the territory in question. With the signing of the Oslo Accords, on the face of it, the Palestinian Authority governs its day to day civil and security matters, thus the territory can no longer be termed "occupied" by Israel as Israel no longer has control. Furthermore, in 40% of the territory where the PA autonomy has complete control, there was a complete withdrawal of Israeli forces. The continued presence of Israeli troops exists only in area C (the other 60% of the territory) and this level of control was agreed to and regulated by the Oslo agreement which was willfully entered into by the Palestinians. Much like the continued presence of U.S. troops was agreed to by the Iraqi interim government, hence, the territory in question is not occupied.

That the Red Cross doesn't interpret international law consistently, between Israel and other examples of what it defined as occupation, is indicative of the Red Cross's political agenda. The Red Cross is supposed to be an impartial organization, without political agenda, that merely monitors and promotes international humanitarian law. Yet, it has clearly and severely abused its lofty position in this case.

The anti-Israel crowd points to two other pillars of support when pointing the finger of occupation at Israel, and those other pillars will be discussed in my next installment.

ABOUT THE AUTHOR

Robert Stark received a B.A. in Political Science and was Editor in Chief of the Lander College Political Science Journal, where he researched and wrote at length on a number of topics including Israel related issues. He served in an elite counter terror combat unit in the Israel Defense Forces, and is currently earning his Juris Doctorate.